SOCMA
Society of Chemical Manufacturers & Affiliates

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Document Control Office (7407M)
Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

RE: Fees for the Administration of the Toxic Substances Control Act; Docket ID: EPA-HQ-OPPT-2016-0401

Dear Document Control Officer:

The Society of Chemical Manufacturers & Affiliates (SOCMA) appreciates the early outreach to stakeholders who may be subject to the new fee structure for the administration of the Toxic Substances Control Act (TSCA). Early engagement is very important. It is also important to provide any useful statistics and cost figures, where possible, for relevant agency activities to help guide the process going forward. We look forward to continuing our dialogue as the agency develops a rule. Below we share some of our initial perspectives on the new authority to collect fees. SOCMA is the only US-based trade association dedicated solely to the specialty chemical industry. Over 70% of SOCMA's active members are small businesses.

When stakeholders came together on the need for TSCA reform there was broad support for requiring industry to pay some amount of fees to fund implementation of the new legislation, versus reliance solely on appropriations. Stakeholders also supported fees being dedicated to the TSCA program rather than going to the Treasury. The new law accomplishes these goals.

As EPA considers how to structure these new fees, SOCMA has several overarching concerns:

Link fees to the costs of the program under which they are charged. In particular, we want to make sure that fees charged for PMN submissions are based exclusively on the cost of the new chemicals program. We are very concerned that PMN submitters could become an easy target for subsidizing the management of existing chemicals because of the large number of new chemical notices submitted annually and the ease of charging for them. We think that Congress intended the fees charged for participation in a given program to be limited to EPA's costs to administer that program – that is the clear implication of the statutory limit on fees; i.e., that they be "not more than reasonably necessary to defray the cost *related to such chemical substance*."[1]

[1] 15 U.S.C. § 2625(b)(1).

PMN fees should promote, not discourage, innovation. While there is broad consensus that $2,500 is too low for a PMN in 2016, we are hopeful EPA will consider a fee structure that is not overly restrictive of market entry. The current fee has contributed to making the US the preferred market for new chemistries and has resulted in a relatively large number of new chemical submissions when compared to other regions. SOCMA understands the appeal of adjusting the former statutorily-prescribed fees for PMNs to account for inflation. Updating $2,500 in 1976 dollars by the Consumer Price Index yields about $10,500, however, it is worth noting that EPA did not make PMN fees payable until 1988. Updating $2,500 in 1988 dollars by the Consumer Price Index yields about $5,000. Regardless of what inflation-adjusted equivalent of $2,500 may be considered, the US is the world leader in chemical innovation and thus in greener chemistry. The lower the PMN fee, the more EPA will continue to encourage that leadership. The higher the fee, the more we risk discouraging it. SOCMA strongly urges EPA to consider this when contemplating a new fee. Certainly, EPA should also adjust the "small business concern" standard in its current rules by whatever percentage it increases the PMN figure – see below.

The Lautenberg amendments did not change the statutory instruction "not to impede unduly or create unnecessary economic barriers to technological innovation."[2] One of the problems with old TSCA was that it created a bias toward continued use of existing chemicals. This was unfortunate, because history has shown that new chemicals tend to be safer. As former OPPT Director Charlie Auer wrote recently:

> [O]ver the course of my EPA career, I came to see new chemicals as a source of continuous innovation in the introduction, over time, of progressively safer and greener chemicals. I encourage EPA to apply both the letter and spirit of new TSCA Section 2(b) to ensure that new chemicals continue to be healthy contributor to innovation.[3]

EPA has demonstrated its ability to promote innovation by expeditiously reviewing roughly 1,000 new chemicals per year and still being protective of human health and the environment. It would be a shame if the number of new chemicals started to trend downward because PMN fees became a barrier to market.

SOCMA supports the current fee structure for new chemicals, which has the benefit of being straightforward and familiar to manufacturers. The current structure includes fees on PMNs, reduced fees on intermediates and for small business concerns, and the ability of submitters to consolidate numerous PMNs into one submission. The structure also takes into account production volumes should a submitter decide to utilize a Low Volume Exemption (LVE) and manufacture at 10,000 kg/yr or less. We see no compelling need to tie fees to volumes any more than they already are. As a guiding principle, any changes the agency considers should be easy to understand and not unnecessarily complex.

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[2] 15 U.S.C. § 2601(b)(3).

[3] "Old TSCA, New TSCA, and Chemical Testing," BNA ENVIRONMENT REPORTER (Aug. 15, 2016).

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EPA now has to refund a PMN submitter if EPA misses its 90/180-day deadlines. We believe an appropriate timeframe to refund a submitter in such cases is within 30 days of EPA missing the deadline.

EPA should not impose fees on applications for exemptions under Section 5(h). EPA historically has not charged fees for applications under the Test Market, Low Volume (LVE), Low Release-Low Exposure (LoREX) or polymer exemptions. We believe the amended statute does not authorize EPA to change its practice and start charging fees for exemption applications. The Senate-passed version of the bill explicitly spoke of charging fees for "requesting an exemption under section 5," but the final bill dropped that language. SOCMA would strongly oppose the imposition of fees on such applications. Activities qualifying for an exemption tend to be extremely restrictive in volume, manufacturing methods, and end use applications, and therefore do not raise the same concerns regarding health or environmental risks that larger volume notifications do. Additionally, exemption notices have shorter review times and do not require as many EPA resources as a PMN review does. EPA should simply include the costs of reviewing exemption applications in the aggregate of costs that PMN fees are designed to recover.

EPA should not charge any fees for making Confidential Business Information (CBI) claims. SOCMA would strongly oppose charging for CBI claims as Canada does. Penalizing CBI claims with fees is a disincentive to innovation. The new TSCA now requires EPA to review a substantial number of CBI claims, and EPA is authorized to recover those costs. To do so, EPA should treat the costs of CBI reviews as part of the overhead to be recovered for fees applicable to the relevant program.

EPA should update the standard for what constitutes a small business concern entitled to lower fees under Section 26(b)(4)(A). At a minimum, EPA should increase the $40 million figure established by 40 C.F.R. § 700.43 to account for inflation. (Adjusting that amount by the Consumer Price Index yields around $81 million.) EPA should adjust this standard for inflation even if it adjusts the PMN fee by a lower amount, since there is a statutory policy reason for raising the PMN fee less: the need to preserve innovation.

It will be very important for EPA to update the small business concern standard and associated fees on a regular basis. Since EPA is already required to update its fees every three years under Section 26(b)(4)(F), it should take that opportunity to reevaluate the small business concern cutoff and associated fees at those junctures. SOCMA would like to keep a dialogue open with EPA and the SBA on this topic and would be happy to assist in any way we can.

Finally, while EPA has a separate statutory mandate to assess the adequacy of its standard for what constitutes a small manufacturer or processor under Section 8(a), SOCMA takes this opportunity to urge EPA to update the $40/$4 million standards under 40 C.F.R. § 704.3 consistently with its actions to update the small business concern standard.

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EPA should not charge fees for submissions under section 4 test rules or orders. We acknowledge that EPA could exercise more of its authority under this section over time, but it remains unclear how many more rules or orders we will see. Furthermore, manufacturers and processors will already have invested resources into generating data if they are subject to a rule or order. Thus, charging fees would be unfair. There is also some precedent for this: the agency has historically not charged for section 4 test rules even though it could have.

Risk evaluations can and should bear the brunt of meeting EPA's cost recovery requirements. As EPA starts to carry out its mandate to evaluate existing chemicals, we should expect new activity in prioritizing chemicals into high and low priority buckets and then in conducting risk-evaluations on high priority chemicals. EPA will be required to have 10 risk evaluations ongoing six months before its fee rule is finalized, and to have initiated 10 more in the succeeding 2.5 years. These evaluations are likely to cost EPA around $1 million apiece (not counting any subsequent risk management rulemaking activities). We believe EPA should charge reasonable fees for these risk evaluations. A reasonable fee would be between 50% and 75% of the cost of the evaluation. That way it would generate the bulk of the obligations EPA needs to cover, but still be less than the fee charged for industry requested risk-evaluation, which industry must fund in their entirety (with the exception of work-plan chemicals, which must be funded at 50%).

The risk evaluation fee should provide affected entities the ability to form consortia on their own terms. However, in light of the Agency's statutory obligation to "take into account the ability to pay of the person required to pay such fee,"[4] EPA should create a mechanism to address instances where very few companies manufacture or process a substance, or where all or most of them are small businesses (or both). While most chemicals subject to risk-evaluation will have a large number of large entities to share costs, it is important not to assume that this will always be the case. This is another area where SOCMA would be happy to discuss in greater detail.

Thank you for the opportunity to share with you SOCMA's perspective on fees.

Sincerely,

Dan Newton
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[4] 15 U.S.C. § 2625(b)(1).

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